

## ANALYSIS OF AMENDED BILL

### Franchise Tax Board

Author: Nava/Maldonado Analyst: Angela Raygoza Bill Number: AB 995  
Related Bills: See Legislative History Telephone: 845-7814 Amended Date: August 4, 2008  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

<b>SUBJECT:</b>	Disaster Loss Deduction/Excess Loss Carryover/July, 2008, Santa Barbara County Wildfire
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### SUMMARY

This bill would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the July, 2008, Santa Barbara County wildfire.

This analysis will not address the bill's changes to the Property Tax Law, as they do not impact the department or state income tax revenue.

### SUMMARY OF AMENDMENTS

The August 4, 2008, amendments replaced the language of the bill as introduced with language that would add the Santa Barbara County Wildfire that began in July, 2008, to the list of specified disasters.

This is the department's first analysis of this bill.

### PURPOSE OF THE BILL

According to the language of the bill, the purpose of this bill is to provide immediate tax relief to individuals and businesses affected by the wildfires.

### EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective and operative immediately upon enactment.

### POSITION

Pending.

#### Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	<u>  X  </u> PENDING

#### Department Director

#### Date

Selvi Stanislaus

08/14/08

## **ANALYSIS**

### **FEDERAL/STATE LAW**

Under federal and state tax law, a business can deduct losses sustained during the taxable year. In addition, individuals can deduct non-business losses not reimbursed by insurance or otherwise to the extent each loss exceeds \$100. Total non-business losses are deductible only to the extent that total losses for the year exceed 10% of the individual's gross income.

Under federal and state tax law, a disaster loss occurs when property is destroyed as a result of a fire, storm, flood, or other natural event in an area proclaimed to be a disaster by the President of the United States or, for state law purposes, by the Governor.

Under federal and state tax law, the taxpayer may elect to claim the loss either in the year the loss occurs or in the year preceding the loss. This election allows the taxpayer to file an amended return immediately for the prior year. The deadline to elect and file an amended return based on federal tax law is before the due date of the return for the taxable year in which the disaster occurred.

Current state tax law extends the due date for making the election to six months after the due date of the original return. For state law purposes, this election may be made for any Presidentially-declared disaster prior to passage of any state legislation allowing special carryover treatment because California conforms to federal disaster tax law treatment. The election is not available for a Governor-only declared disaster until enabling state legislation has been enacted.

State tax law identifies specific events as disasters that are then allowed additional special carry forward treatment for state tax purposes. That special treatment allows 100% of the disaster loss to be carried forward for up to fifteen taxable years. For individual losses, the same carry forward rules apply only if the total losses exceed ten percent of the individual's federal adjusted gross income.

## **PROGRAM BACKGROUND**

On July 3, 2008, Governor Arnold Schwarzenegger proclaimed the wildfire that occurred in Santa Barbara County to be a state emergency. On July 4, 2008, President George W. Bush declared this same county to be a federal emergency.

### **THIS BILL**

This bill would add the Santa Barbara County wildfire that began on July 1, 2008, and ended on July 28, 2008, to the list of specified disasters.

This bill would allow special excess loss carry forward treatment for up to fifteen taxable years for losses sustained as a result of the wildfires that occurred in Santa Barbara County. The same carry forward rule applies to individual non-business losses if the total losses for the year exceed 10% of the individual's federal adjusted gross income.

For federally declared emergencies, the taxpayer may either take the deduction on the current year income tax return or may file an amended return for the prior year, and then carry forward unused losses for up to 15 years. Taxpayers electing to take a deduction on the prior-year return may do so through the final return filing date for the current year.

#### IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs or operations.

#### **LEGISLATIVE HISTORY**

AB 1759 (Devore, 2007/2008) would allow taxpayers disaster loss treatment for the losses sustained as a result of the 2007 wildfires that occurred in Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura counties. Also, Butte, Kern, Mariposa, Mendocino, Monterey, Plumas, Santa Clara, Santa Cruz, Shasta, and Trinity counties as a result of wildfires that occurred in May and June 2008 and Santa Barbara County wildfire in July 2008. This bill is currently in the Senate Appropriations Committee.

SB 1064 (Hollingsworth, 2007/2008) would allow taxpayers disaster loss treatment for the losses sustained as a result of the wildfires that occurred in Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura Counties in 2007 and for the wind damage that occurred in Riverside County during October, 2007. Also, Butte, Kern, Mariposa, Mendocino, Monterey, Plumas, Santa Clara, Santa Cruz, Shasta, and Trinity counties as a result of wildfires that occurred in May and June 2008 and Santa Barbara County wildfire in July 2008. This bill is currently in the Assembly Appropriations Committee.

AB 62 (Nava, Stats. 2007, Ch. 224) allows taxpayers disaster loss treatment for losses sustained as a result of the wildfires that occurred in Ventura County in 2006, and in El Dorado, Santa Barbara, and Ventura Counties during 2007.

SB 38 (Florez, Stat. 2007, Ch. 222) allows taxpayers disaster loss treatment for losses that occurred as a result of the wildfire in Riverside County in October 2006.

SB 114 (Florez, Stat. 2007, Ch. 223) allows taxpayers disaster loss treatment for losses that occurred as a result of the freezing conditions that occurred in California in January, 2007. The counties affected by that disaster were El Dorado, Fresno, Imperial, Kern, Kings, Madera, Merced, Monterey, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Stanislaus, Tulare, Ventura, and Yuba Counties.

#### **ECONOMIC IMPACT**

##### Revenue Estimate

Revenue Analysis for AB 995 – As Amended August 4, 2008 Effective for Tax Year BOA January 1, 2008 Assumes Enactment after June 30, 2008				
Fiscal Year	2007-08	2008-09	2009-10	Total for three years
Disaster Relief	Loss < \$150,000	Gain < \$150,000	Gain < \$150,000	Loss < \$150,000

## Revenue Discussion

### **2008 Santa Barbara County Wildfires (Gap Fire)**

Current data indicates that the 2008 Santa Barbara County wildfires destroyed four outbuildings. It is estimated that the average value of the outbuildings is \$40,000 and that 100% of this value is uninsured, for a total of \$160,000 (4 outbuildings x \$40,000 estimated average value). It is assumed that 90% of these losses would exceed the adjusted gross income threshold and that taxpayers could claim 50% of these losses in one year ( $\$160,000 \times .90 \times .50 = \$72,000$ ). By applying a 9% tax rate, the total amount that could be refunded is approximately \$6,500 ( $\$72,000 \times .09 = \$6,480$ ). Based on taxpayer behavior, a 1% assumption is used to estimate those that would delay the filing of an amended return beyond April 15, 2009. The revenue effects would be insignificant. The extended carryover period is assumed to have an insignificant impact given the small amount of losses eligible for carryover.

### **LEGISLATIVE STAFF CONTACT**

Legislative Analyst  
Angela Raygoza  
(916) 845-7814

[angela.raygoza@ftb.ca.gov](mailto:angela.raygoza@ftb.ca.gov)

Revenue Manager  
Rebecca Schlusser  
(916) 845-5986

[rebecca.schlusser@ftb.ca.gov](mailto:rebecca.schlusser@ftb.ca.gov)

Asst. Legislative Director  
Patrice Gau-Johnson  
(916) 845-5521

[patrice.gau-johnson@ftb.ca.gov](mailto:patrice.gau-johnson@ftb.ca.gov)